

**SUPREME COURT MINUTES
THURSDAY, JULY 31, 2003
SAN FRANCISCO, CALIFORNIA**

S023628

PEOPLE v. SAPP (JOHN)

Opinion filed: Judgment affirmed in full

Majority opinion by Kennard, J.

--- joined by George, C.J., Baxter, Werdegarr,
Chin, Brown, Moreno, JJ.

S094088

F033862 Fifth Appellate District

PEOPLE v. SANDERS

Opinion filed: Judgment affirmed in full

Majority Opinion by Moreno, J.

--- joined by George, C.J., Werdegarr,
Chin JJ.

Concurring Opinion by Kennard, J.

Concurring Opinion by Brown, J.

Concurring and Dissenting Opinion by
Baxter, J.

S105781

C036904 Third Appellate District

PEOPLE v. MONTES

Opinion filed: Affirmed in part and reversed in part.

The judgment of the Court of Appeal is reversed insofar as it struck the section 186.22(b)(1) enhancement and imposed the section 186.22(b)(5) alternate penalty provision. The Court of Appeal is directed to order the trial court to amend the abstract of judgment to reflect that defendant was convicted of attempted murder without premeditation. In all other respects, the judgment of the Court of Appeal is affirmed.

Majority Opinion by Moreno, J

--- joined by George, C.J., Kennard, Baxter,
Werdegarr, Chin, Brown, JJ.

S012279

PEOPLE v. LUCAS (DAVID A.)
Extension of time granted

to August 15, 2003 to file appellant's opening brief. After that date, no further extension will be granted. Extension granted based upon counsel Thomas Lundy's representation that he anticipates filing the brief by 8-15-2003.

S015008

PEOPLE v. SCHMECK (MARK L.)
Extension of time granted

to October 3, 2003 to file respondent's brief. After that date, only one further extension totaling about 30 additional days will be granted. Extension granted based upon Deputy Attorney General Violet Lee's representation that she anticipates filing the brief by 11-9-2003.

S026223

PEOPLE v. SMITH (GREGORY SCOTT)
Extension of time granted

to September 29, 2003 to file reply brief. After that date, no further extension will be granted. Extension granted based upon Deputy State P.D. William Hassler's representation that he anticipates filing the brief by 9-27-2003.

S027264

PEOPLE v. FRIEND (JACK W.)
Extension of time granted

to October 3, 2003 to file appellant's opening brief. The court anticipates that after that date, only two further extensions totaling 120 additional days will be granted. Counsel is ordered to inform his or her assisting attorney or entity, if any, and any assisting attorney or entity of any separate counsel of record, of this schedule, and to take all steps necessary to meet it.

S034072

PEOPLE v. CURL (ROBERT ZANE)
Extension of time granted

to October 3, 2003 to file appellant's opening brief. The court anticipates that after that date, only three further extensions totaling 180 additional days will be granted. Counsel is ordered to inform his or her assisting attorney or entity, if any, and any assisting attorney or entity of any separate counsel of record, of this schedule, and to take all steps necessary to meet it.

S041008

PEOPLE v. HOYOS (JAIME A.)
Extension of time granted

to August 28, 2003 to file appellant's opening brief. After that date, no further extension is contemplated. Extension granted based upon counsel Lisa Short's representation that she anticipates filing the brief by 8-28-2003.

S045184

PEOPLE v. BONILLA (STEVEN W.)
Extension of time granted

to September 30, 2003 to file respondent's brief. After that date, only two further extensions totaling about 90 additional days are contemplated. Extension granted based upon Deputy AG Bruce Ortega's representation that he anticipates filing the brief by 12-31-2003.

S046816

PEOPLE v. THORNTON (MARK S.)
Extension of time granted

to October 15, 2003 to file appellant's opening brief. After that date, no further extension is contemplated. Extension granted based upon counsel Paul Spiegelman's representation that he anticipates filing the brief by 10-15-2003.

S050851

PEOPLE v. DYKES (ERNEST E.)
Extension of time granted

to October 3, 2003 to file reply brief. The court anticipates that after that date, no further extension will be granted. Counsel is ordered to inform his or her assisting attorney or entity, if any, and any assisting attorney or entity of any separate counsel of record, of this schedule, and to take all steps necessary to meet it.

S054569

PEOPLE v. WHALEN (DANIEL L.)
Extension of time granted

to September 30, 2003 to file appellant's opening brief. The court anticipates that after that date, only one further extension totaling 60 additional days will be granted. Counsel is ordered to inform his or her assisting attorney or entity, if any, and any assisting attorney or entity of any separate counsel of record, of this schedule, and to take all steps necessary to meet it.

S108321

MILIOTTI (TONY) ON H.C.
Extension of time granted

Petitioner's time to serve and file the reply to informal response is extended to and including September 4, 2003.

S110795

HUNDLEY (MARK) ON H.C.
Extension of time granted

to August 11, 2003 to file petitioner's reply to informal response. No further extensions are contemplated.

S114054

B150963 Second Appellate District,
Division Three

ROBINSON HELICOPTER CO. v. DANA CORP.
Extension of time granted

to September 12, 2003 to file appellant's
answer brief on the merits. No further
extensions will be granted.

S115428

KELLY (HORACE) ON H.C.
Extension of time granted

to September 2, 2003 to file the informal
response. After that date, only one further
extension totaling about 30 additional days is
contemplated. Extension granted based upon
Deputy Attorney General Sara Gros-Cloren's
representation that she anticipates filing the
document by 10-3-2003.

S115483

KELLY (HORACE EDWARDS) ON H.C.
Extension of time granted

to September 2, 2003 to file the informal
response. After that date, only one further
extension totaling about 30 additional days is
contemplated. Extension granted based upon
Deputy AG Sara Gros-Cloren's representation
that she anticipates filing the document by
10-3-2003.

S116211

TURNER (THADDAEUS L.) ON H.C.
Extension of time granted

to August 15, 2003 to file informal response.
After that date, no further extension is
contemplated. Extension granted based upon
Deputy Attorney General Jeffrey Firestone's
representation that he anticipates filing the
document by 8-15-2003.

S116794

HOLT (JOHN LEE) ON H.C.
Extension of time granted

to August 20, 2003 to file the informal response. After that date, no further extension is contemplated. Extension granted based upon Deputy AG Erik Brunkal's representation that he anticipates filing the document by 8-9-2003.

S022481

PEOPLE v. NAVARETTE (MARTIN A.)
Orders filed (2)

- (1) Good cause appearing, the application of appointed counsel for permission to withdraw as habeas corpus/executive clemency attorney of record for condemned prisoner Martin Anthony Navarette, filed July 14, 2003, is granted.

The order appointing Jeffrey L. Garland as counsel of record for condemned prisoner Martin Anthony Navarette, filed August 24, 1994, is hereby vacated with respect to the habeas corpus/executive clemency proceedings related to the above-referenced automatic appeal now final in this court. Mr. Garland shall continue to be responsible for all appellate duties specified in Supreme Court Policies Regarding Cases Arising From Judgments of Death, policy 3, standards 1-1 and 2-1.

On the court's own motion, Gary B. Wells is hereby appointed as habeas corpus/executive clemency counsel of record for condemned prisoner Martin Anthony Navarette. Counsel is appointed for purposes of all postconviction proceedings in this court, and for subsequent proceedings, including the preparation and filing of a petition for clemency with the Governor of California, as appropriate.

Any "petition for writ of habeas corpus will be presumed to be filed without substantial delay if it is filed . . . within 24 months" of this date (Supreme Ct. Policies Regarding Cases Arising From Judgments of Death,

policy 3, timeliness std. 1-1.1), and it will be presumed that any successive petition filed within that period is justified or excused (see *In re Clark* (1993) 5 Cal.4th 750, 774-782), in light of prior habeas corpus counsel's declaration, in support of his motion to withdraw, to the effect that he was unable to discharge his duty to investigate and, if appropriate, present a habeas corpus petition on behalf of condemned prisoner Martin Anthony Navarette.

Jeffrey L. Garland is directed to deliver to Gary B. Wells, within 30 days from the filing of this order, all appellate and habeas corpus investigation work product, trial files, trial transcripts, investigation reports, and related materials that he has obtained from condemned prisoner Martin Anthony Navarette or his trial counsel, paralegals, experts and investigators, or from any other source.

George, C.J., and Brown, J., were absent and did not participate.

- (2) In conjunction with the order filed this day permitting Jeffrey L. Garland to withdraw as appointed habeas corpus/executive clemency counsel of record for condemned prisoner Martin Anthony Navarette, with regard to the above-referenced automatic appeal now final in this court, Mr. Garland is ordered to reimburse this court the sum of \$35,000. Subject to Mr. Garland's timely and satisfactory completion of all remaining appellate obligations on behalf of his condemned client, as specified in Supreme Court Policies Regarding Cases Arising From Judgments of Death, policy 3, standards 1-1 and 2-1, the court will permit him to satisfy this reimbursement order from future appellate fixed fee progress payments to which he would otherwise become entitled.

George, C.J. and Brown, J., were absent and did not participate.

SAN FRANCISCO

JULY 31, 2003

1245

S109306

A094460 First Appellate District,
Division Five

DOWHAL v. SMITHKLINE BEECHAM
HEALTHCARE
Order filed

The application of Douglas N. Letter of the
District of Columbia for admission pro hac
vice to appear on behalf of an amicus is
hereby granted.

S116614

UTILITY REFORM NETWORK v. P.U.C.
(ALLIANCE FOR RETAIL ENERGY MARKETS)
Order filed

The application of real party in interest
Strategic Energy to file a consolidated answer
to petitions for writ of review in case numbers
S116614 & S117388 is hereby granted.